

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NELIDA AGOSTO ORTIZ,)	
Plaintiff)	
)	
v.)	C.A. NO. 10-30009-MAP
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security Administration,)	
Defendant)	

MEMORANDUM AND ORDER RE:
REPORT AND RECOMMENDATION WITH REGARD TO
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS
AND DEFENDANT'S MOTION TO AFFIRM COMMISSIONER
(Dkt. Nos. 8, 11, & 13)

February 9, 2011

PONSOR, D.J.

This is an action for judicial review of a final decision by the Commissioner of the Social Security Administration regarding Plaintiff's entitlement to Social Security Disability Insurance benefits and Supplemental Security Income pursuant to 42 U.S.C. §§ 405(g) and 1381(c)(3). Plaintiff and Defendant filed cross-motions seeking judgment, and these motions were referred to Magistrate Judge Kenneth P. Neiman for a Report and Recommendation.

On January 10, 2011, Judge Neiman issued his Report and Recommendation, to the effect that Plaintiff's motion should be denied and Defendant's motion should be allowed.

Plaintiff filed timely objections to the Report and Recommendation, arguing that Plaintiff's severe headaches and depression constituted impairments of sufficient severity as to entitle her to benefits.

Upon de novo review, the court will adopt the Report and Recommendation, deny Plaintiff's motion, and allow Defendant's motion.

As Judge Neiman's Recommendation points out, disagreements with regard to the weight or credibility of the evidence must be resolved by the Commissioner. The court's responsibility is to limited to determining whether substantial evidence supported the Commissioner's decision. In this case, Judge Neiman correctly concluded that the determination by Defendant that neither Plaintiff's migraine headaches nor her depression were severe was amply supported. As the Recommendation notes, even if there was an error in the finding of lack of severity regarding the depression, the limitations imposed by this condition did not render Plaintiff unable to perform work available in significant numbers in the local and national economies.

For these reasons, the court hereby ADOPTS Judge Neiman's Report and Recommendation (Dkt. No. 13). Based upon this, the court hereby ALLOWS Defendant's Motion to Affirm Commissioner (Dkt. No. 11) and DENIES Plaintiff's

Motion for Judgment on the Pleadings (Dkt. No. 8). The clerk will enter judgment for Defendant. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge